

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 817 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GSRTC

Versus

JITENDRA L RATHOD

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Appearance:

MR YS LAKHANI for Petitioner

SERVED for Respondent No. 1

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 19/02/97

ORAL JUDGEMENT

The respondent workman joined the service of the petitioner corporation in the year 1970 as a driver. He was charged on the ground of absence from service and from duty without prior permission. Departmental inquiry

was conducted. The respondent workman was issued letters by registered post which came to be returned with the postal endorsement 'left for Dubai.' Services of the respondent came to be terminated after holding departmental inquiry on the ground of the aforesaid misconduct by the petitioner . He was terminated on 20.1.1983.

The respondent challenged the order of termination by raising an industrial dispute almost after four years. The reference was made to the Labour court at Rajkot. The Labour court, Rajkot by passing the impugned award directed the petitioner corporation to reinstate the respondent without back wages. The impugned award and order of the Labour court was passed on 22.8.1995. Hence, this petition at the instance of the petitioner.

The respondent workman had left India and abstained from duty without taking permission and went to Dubai and Maskat. He also did not participate and attend the departmental inquiry. He raised the industrial dispute by way of Reference after more than four years. The Labour court, after considering the facts and circumstances passed the order of reinstatement without back wages but with continuity of service on 22.8.1995.

The legality and validity of the departmental inquiry had not been questioned before the Labour court. Under Section 11-A of the Industrial Disputes Act, 1947 (' ID Act') the Labour court or the Industrial Tribunal has wide discretionary jurisdiction to grant appropriate relief in respect of appreciation of evidence and imposition of penalty.

No doubt, dismissal from service on the ground of misconduct due to absence from duty without prior permission would be disproportionate. However, looking to the past record and the fact that the workman raised the industrial dispute after four years and the finding of misconduct and delinquency , some punishment ought to have been imposed. As per the past record, there were nine defaults. In most of the defaults in the past, the respondent remained absent unauthorisedly. After having taken into consideration the persistent and consistent many defaults in the past in respect of unauthorised absence from duty and the fact that the workman had left India and had gone to Dubai and other places and also that he did not raise the industrial dispute for a long spell of four years and considering the underlying spirit and design of provisions of Section 11-A of the ID Act, this court is satisfied that withholding of two

increments with future effect will be justified by way of punishment in view of the consistent, persistent and repeated acts of misconduct in remaining absent from duty without permission causing adverse effect on the administration , efficiency and great hardship to the members of public.

In the result, the petition is partly allowed . The impugned award and order is modified. Two increments shall be withheld with future effect. Rest of the award is confirmed with no order as to costs. Petition stands allowed to the aforesaid extent. Rule is made absolute accordingly.